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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/705,671	11/03/2000	David Martin	03445-P002A	6264
24126	7590	11/05/2004	EXAMINER	
ST. ONGE STEWARD JOHNSTON & REENS, LLC 986 BEDFORD STREET STAMFORD, CT 06905-5619			LE, KHANH H	
			ART UNIT	PAPER NUMBER
			3622	

DATE MAILED: 11/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/705,671

Applicant(s)

MARTIN, DAVID

Examiner

Khanh H. Le

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Detailed Action

1. This Office Action is responsive to the Amendment and Response dated June 30, 2004. The Specifications Amendment has been entered.

2. Claims 1-4, 7-12, 14, 16-23 are amended. Claims 1-23 remain presented for examination. Claims 1,5, 9,15,19 are independent.

Claim Rejections - 35 USC § 112

3. Previous rejections of claims 2-3, 7-8, 10, 11, 14, 16, 17, 20-21, 23 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention are withdrawn.

Claim Rejections - 35 USC §101

4. Rejections of claims 1-14, 19-23 are rejected under 35 U.S.C. 101 are withdrawn thanks to the amendments.

Response to argument:

5. Applicant's arguments have been fully considered but they are not persuasive.

First, Applicants argue at page 12 1st full paragraph that Roseman does not disclose any systems for testing promotion response by alteration of call frequency, however R Roseman is used in a 35 USC 103 rejection and does not need to disclose such.

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Then, Applicants argue P. 12 2nd full paragraph: “Anonymous does not disclose any systems for testing promotion response by alteration of call frequency using a specified contact frequency that is adjusted to provide an input to a sales staff to follow.” However, Anonymous does read on testing promotion response by alteration of call frequency while Roseman discloses a system using a specified contact frequency that is adjusted to provide an input to a sales staff to follow. Thus the combination Anonymous/ Roseman duly discloses a system as claimed as explained in the body of the rejection.

The PTO can satisfy the burden under section 103 to establish a *prima facie* case of obviousness “by showing some objective teaching in the prior art ... would lead that individual to combine the relevant teachings of the references.”

In re Fine, 5 USPQ2d 1596 (CA FC 1988)

“To support conclusion that claimed combination is directed to obvious subject matter, references must either expressly or impliedly suggest claimed combination or examiner must present convincing line of reasoning as to why artisan would have found claimed invention to have been obvious in light of references' teachings.” *Ex parte Clapp*, 227 USPQ 972 (BdPatApp&Int 1985). Here, the examiner has presented a convincing line of reasoning as to why artisan would have found claimed invention to have been obvious in light of references' teachings.

Contrary to Applicants' arguments that Anonymous discloses only “we got sales by calling on all the people we hadn't called on before”, Anonymous does disclose “testing promotion response to changes in call frequency” and stands for the

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quantification of effort and result of contacts. Further Roseman discloses a system where a sale force makes prioritized calls while searching to maximize the best call frequency. Roseman implies that call frequency was adjusted, see “sales response...peak at 6 calls, decline thereafter”. Thus Roseman implies different frequencies were tested for doctors. Also Roseman calls for “post call analysis” to determine the effects and to see if the number of calls is proper.

To Applicants' Arguments, at p. 13 last paragraph, citing 3 unique characteristics of the claimed method the Examiner note that none of the three characteristics is reflected in the claims. It cannot be said from the claims that the method is either 1) indirect and easier to use as argued, or 2) that the experiment does not distort the results or 3) that the method randomizes which customers get the decreases/increases thereby allowing to test the responses of subgroups.

Further the preamble not given weight. Therefore, contrary to Applicants' arguments at p. 12 and 13, the claims do not clearly claim “testing promotion response by alteration of call frequency” “in a system where the sales force alters a planned selling cycle” and thus the cited references do not need to meet exactly the language argued.

Also it is not claimed that the promotional response is to be determined within the various subgroups of customers as argued at p. 13, lines 1-3.

On page 13, full 2nd and 3rd paragraphs, Applicants further argue details that are either irrelevant or not specifically claimed, such as “without regard to content” , “where a fixed script is employed” , “randomization of customers”... etc...

Thus the original rejections are maintained. The following is a repeat of the last Office Action.

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Claim Rejections - 35 USC § 103

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claims 1, 5-9,13-15,19,23 are rejected under 35 U.S.C. 103(a) as being unpatentable over “How to establish quality control over the sales force” by Ed Roseman, Medical Marketing and media v27, n10, p.544(7) , Oct. 1992, Dialog File 148, record # 06199077, hereinafter Roseman, in view of “Selling” by Anonymous, Marketing Telemarketing Awards 1997 Supplement, pp 18-19, Jun 19, 1997, Dialog File 15, Record # 01444255, hereinafter Anonymous.

As to claim 1 Roseman discloses

A method of determining effectiveness of direct personal promotion efforts in a marketing environment in which representatives make contact with a customer in accordance with a prioritized list, comprising the steps of:

a) creating a prioritized list of customers for representatives of an organization to use in contacting customers, said prioritized list including an identification of a customer identity and a specified contact frequency for each such customer to be executed by said representatives (page 1, 5th full paragraph : docs are ranked, i.e. identification of each is implied ; then specific call frequencies are assigned to them)

Roseman does not specifically disclose but Anonymous , at page 2, 2nd to 9th paragraphs, does disclose

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b) adjusting a specified contact frequency for a selected subset of customers (the 20,000 smaller customers out of all customers) to create an adjusted prioritized list (adjusting the contact frequency from zero contact to some contact, p. 2, 7th paragraph);

c) communicating said adjusted prioritized list to said representatives (this is implied) ;

d) measuring changes (interpreted as measured against a control group) in the promotional response among said selected subset of customers(p. 2, 9th paragraph: measure 27.9% more as against a control group of the 20,000 smaller customers subset).

It would have been obvious to one skilled in the art at the time the invention was made to add Anonymous's method of adjusting contact frequency for a small group and test measured responses changes as against a control group to Roseman's prioritized list to determine whether changing call frequencies increase sales as a step toward determining optimum call frequencies (Roseman p. 2, 4th paragraph) and in the process to identify the better leads (Roseman, at page 2, 1st to 6th paragraphs, discloses "constantly fine-tuning the physician selection").

As to claims 6-7 (dependent on claim 1) and independent claims 9, 15,19, neither Anonymous or Roseman specifically discloses

"using a measured change (increase) in promotional response among said selected subset of customers as an input to creation of an updated prioritized list specifying a modified contact frequency for certain (or one or more first target group of) customers",

However, Anonymous discloses a measured change (increase) (29.7% increase) in promotional response among a selected subset of customers. Implicit in Anonymous's change measure is the identification of the better respondents.

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On the other hand, Roseman discloses monitoring and fine tuning of doctor targets i.e. of the prioritized list. Roseman further discloses better responding doctors get higher call frequencies (page 1, 10th paragraph) .

It would have been obvious to one skilled in the art at the time the invention was made, in view of the explicit teachings of both references as stated above, to add Anonymous to Roseman and have the claimed “using a measured change (increase) in promotional response among said selected subset of customers as an input to creation of an updated prioritized list specifying a modified contact frequency for certain customers (claim 6) or for or one or more first target group of customers most likely to generate additional sales in response to a increased contact frequency.(claims 7 and 9).

In other words, once a positive response has been determined in response to an increase in contact frequency (such as 29.7% as taught by Anonymous) and implicitly the better respondents identified, it would have been obvious to one skilled in the art at the time the invention was made, in view of Roseman’s teaching that docs who respond well to calls (“customers most likely to generate additional sales in response to a increased contact frequency”) get higher call frequencies, to use that data of higher response to calls (such as 29.7% as taught by Anonymous)as an input to further identify the higher potential doctors and to modify (increase) the call frequency to that group of positively responding customers (doctors), thereby creating a “updated prioritized list specifying a modified contact frequency”, to those identified customers, to potentially improve ROTI (return on time invested) as taught by Roseman (p. 2 , 4th paragraph).

Claim 15 essentially parallels claim 9 in software format and is rejected on the same basis (Roseman’s optimization page 2, 4th paragraph suggests the use of computers and software).

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Claim 19 essentially parallels claim 9 with the addition of communication the updated prioritized list to pharmaceuticals representatives, which would have been obvious in order to carry out the modified sales campaign.

As to claims 5, 13 (dependent on claims 1 and 9 respectively), monitoring of actual contacts with customers is taught by Roseman at p. 1, 9th paragraph, thus “measuring changes in actual contacts by said representatives with said selected subset of customers” in the Roseman/Anonymous system would have been obvious to one skilled in the art at the time the invention was made to be able to measure the changes taught by Anonymous and thereby effect the Roseman/Anonymous method.

As to claims 8, 14, 23 (dependent on claims 1, 9, 19 respectively) neither Anonymous or Roseman specifically discloses

using a measured decrease (change) in promotional response among said selected subset (one or more second target groups) of customers as an input to creation of an updated prioritized list with a modified contact frequency decreasing contact frequency with customers whose promotional response is least affected by a decrease in contact frequency.

However, if the response measured is negative when applied to a (second or subset)group of doctors, it would have been obvious to one skilled in the art at the time the invention was made, to identify that group of doctors as low-responding and in view of Roseman’s teaching that lower responding docs get lower call frequency (p. 1 8th paragraph) , the lower measured response thus would have been used as an input to the “creation of an updated prioritized list with a modified (decreased) contact frequency applicable to customers contained in said one or more second target groups of customers” and “whose promotional response is least affected by a decrease in contact frequency” to better focus sales efforts as taught by Roseman (page 1, 9th paragraph; page 2, 1st paragraph) by spending less time with the low potential customers.

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7. Claims 2-4, 10-12, 16-18, 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roseman, in view of Anonymous and further in view of “I want my MVT “: Drive marketing results with multivariate testing techniques” by Bell, Gordon H., Dialog File 15, record #01549882, herereinafter Bell.

As to claims 2-4, neither Roseman nor Anonymous specifically disclose the step b) of adjusting the specified contact frequency comprises increasing (claim 2) or decreasing (claim 3) a quantity of contacts made with a group of identified customers in a specified time period or increasing a quantity of contacts made with a first group of identified customers and decreasing a quantity of contacts made with a second group of identified customers (claim 4)

However Bell discloses a method for testing, in the market place, several ideas at the same time on different subgroups, measuring the results from each test on each group then rolling out the best idea to the whole group later (see page 2-3). At page 3, 7th paragraph, Bell further teaches modifying calls frequency (decreasing calls frequency from one week to 4 weeks apart) and measuring the effect of such change (“helped”), inherently using data covering two periods of the same length).

It would have been obvious to one skilled in the art at the time the invention was made to add the Bell MVT test and measure technique as applied to call frequencies to the prioritized list based on call frequency system of Roseman/Anonymous effectively to test and measure the marketplace effect of several ideas (different call frequencies) such as taught by Bell.

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As to claims 2 and 3, it to use an increasing or decreasing frequency (as applied to one subgroup and test against another control group) as a test parameter when finding an optimum frequency as taught by Roseman (P. 2 4th paragraph).

As to claim 4, testing both increasing and decreasing frequencies is, as stated above, effectively to test and measure the marketplace effect of several ideas (different call frequencies) quickly, as taught by Bell.

As to claims 10-12, 16-18, 20-22 (dependent on claims 9, 15, 19 respectively) , they parallel claims 2-4 and are rejected on the same basis.

Conclusion

8. Prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khanh H. Le whose telephone number is 703-305-0571. The Examiner works a part-time schedule and can normally be reached on Tuesday-Thursday 9:00-6:00.

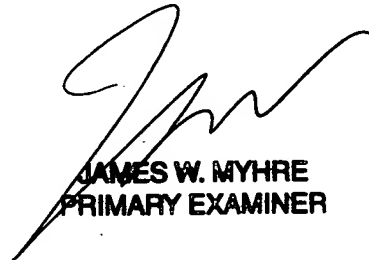
If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Eric Stamber can be reached on 703-305-8469. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9326 for regular communications and 703-872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113

October 26, 2004

KHL

Khanh H. Le



JAMES W. MYHRE
PRIMARY EXAMINER